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FEDERAL COMMUNICATIONS COMMISSION
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Advanced Television Systems) MM Docket No. 87-268
and their Impact upon the)
Existing Television Broadcast)
Service)

To: The Commission.

**COMMENTS OF THE COMMUNITY BROADCASTING
COMPANY OF SAN DIEGO (CBCSD), IN RESPONSE TO THE
SIXTH FURTHER NOTICE OF PROPOSED RULE MAKING**

The Community Broadcasting Company of San Diego, permittee of Low Power Television Broadcast Station K17DI, Channel 17, San Diego, California ("CBCSD"), by its counsel, here respectfully presents Comments in the referenced proceeding, as invited by the Sixth Further Notice of Proposed Rule Making, 61 F. Reg. 43209, August 21, 1996 ("Sixth FN"). This marks CBCSD's first participation in this historic docket.

CBCSD acquired extensive broadcast and studio facilities from a predecessor entity, and has made substantial investment on its own account to create a modern, fully functional originating television broadcast station. At the last "window" filing opportunity, on May 17, 1996, CBCSD submitted a major modification, File No. 960517K3, to bring its facilities South for optimum coverage of the San Diego metro area. A map showing the

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station's present and proposed predicted coverage is submitted herewith as Attachment A. In the new configuration, the station will be offering a Spanish-language program service including news, public affairs and other categories of public interest programming. Hispanic audience within the station's coverage area is estimated to be well in excess of 500,000.¹

A few conclusions are suggested by Attachment A. Low power television continues to show promise for effective coverage, even to large metropolitan areas, the new Channel 17 here projecting a "Grade A" quality signal throughout the southern part of San Diego City. Because of surrounding mountainous terrain and the Pacific Ocean, the pattern of predicted coverage will not be markedly inferior to that provided by any UHF full service TV broadcaster.

CBCSD recognizes that it is expected to operate on a secondary, non-interference basis. But secondary status, as described from the beginnings of LPTV service in 1981, never presupposed the advent of anything like DTV. CBCSD retains a legal claims and interest, and the Commission must be sensitive to a public interest dimension, in any new initiative affecting CBCSD's proposal by conscious choice of the regulatory body, rather than through growth and change in established services.

¹ In the 1990 U.S. Census, the San Diego division reported 385,808 Hispanics. The 500,000 estimate is based on this, as well as (a) a few surrounding census divisions and places that also would be included in K17DI coverage (b) an adjustment for Hispanic population growth since 1990 (c) the likelihood of some undercount of Hispanic population. U.S. Department of Commerce, 1990 Census of Population and Housing, [Summary volume] California.

The Sixth Further Notice of Proposed Rule Making ("Sixth FN") proposes the use of Channel 17 as the DTV channel associated with KPBS-TV, licensed to California State Univ., the local Public Broadcasting Service member station. This selection was made by a computer program, with no regard for the fact that an existing LPTV station is on the same channel. Such channel selection is arbitrary and capricious. Moreover, because of San Diego's proximity to the Los Angeles basin, existing frequency congestion, aggravated by the doubling channels for DTV, may leave CBCSD with no migration alternative, no matter how liberally the Commission uses displacement relief where it can.

CBCSD has no fight with KPBS, an excellent public broadcaster, but submits that its needs can be accommodated in some other manner. The Commission can make more intensive use of adjacent channels, and find a replacement for KPBS, while leaving CBCSD's facility only slightly reduced², or completely undisturbed. CBCSD submits that the Government does not have sufficient spectrum to implement DTV and to recover the so-called non-core blocks at the same time. Spectrum recovery should await the completion of the DTV transition. Specifically, CBCSD endorses

² In the event that facilities changes are mandated, or CBCSD's facilities reduced, CBCSD submits that it should be compensated fully for such changes, inasmuch as it has made its substantial investment to this point in good faith, without the knowledge that its facility could be taken for another user. Any spectrum recovery for auction purposes, to raise Federal revenue, while diminishing CBCSD's facility, can be regarded as a confiscatory Federal "tax" on CBCSD, unless there is an effective, comprehensive scheme for restitution for those adversely affected.

the Broadcast Caucus counter-proposal, in the specific of proposing Channel 65 for KPBS' DTV proposal, and leaving the following channels locally for additional services, including LPTV transition: 18, 19, 47, 53, 55, 62, 64.

That brings us to a concluding thought. It is only with the Sixth FN that the Commission has evidenced any concern whatsoever for the fate of existing TV translator and LPTV service. Not to be churlish, the concern is late arriving but tremendously welcome. Given the history of this docket, LPTV operators might be forgiven in digging themselves in and endeavoring by all means to preserve their service, as the singular priority. At the same time, CBCSD welcomes DTV service in concept, for the promise it holds of a significant leap in quality, and greatly enhanced flexibility for the broadcaster. Ideally, CBCSD would like, and hereby requests, that its Channel 17 be preserved, and separately that it be awarded a second channel to pursue DTV operations, on the same basis as full service TV broadcasters. The channels identified by the Broadcast Caucus would appear to make such accommodation possible.

CBCSD's bottom line is that it must be able to retain Channel 17 or its substantial equivalent. Thereafter, CBCSD respectfully requests that it, and other LPTV operators, receive authorization to begin DTV service at the earliest possible date. That may give the industry the chance to assume leadership in experimentation and implementation. Then at the final stage, CBCSD respectfully requests that it not be required to effect a DTV switch-over by

any particular time. Secondary service lends itself to flexible arrangements, and the switch-over of LPTV stations, one by one, should be permitted to follow the natural course of DTV set penetration, program offerings, and other market forces.

Respectfully submitted,



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